Appendix 1. Hanalei Bay (Island of Kauai) Focus Site Report

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Section 1: Context

- (1.1) Site Description and Recreational Activities Occurring in Hanalei Bay
- (1.2) Commercial Ocean Recreation Operations in Hanalei Bay
- (1.3) Regulation of Commercial Ocean Recreation Activities

Section 2: Primary Issues of Concern

- (2.1) Resource Conservation
- (2.2) Public Safety and Access
- (2.3) Commercial Ocean Recreation Activities

Section 3: Other Issues of Concern

Section 4: Proposed Recommendations for the Hanalei Focus Site

Table 1: Proposed Recommendations for Resource Conservation

Table 2: Proposed Recommendations for Enhancement of Public Safety and Access

Table 3: Proposed Recommendations for Commercial Ocean Recreation Activities

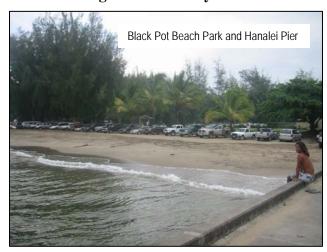
Table 4: Comparison of Different Commercial Operator Permit Issuance Systems

1. CONTEXT

A site map and a description of the Hanalei Focus site and recreational activities occurring there are given below. This is followed by a description of commercial ocean recreation operations occurring in Hanalei Bay. County ordinances and state and federal regulations pertaining to commercial ocean recreation activities are then summarized.

1.1 Site Description and Recreational Activities Occurring in Hanalei Bay

There are three county beach parks providing access to Hanalei Bay. They are Hanalei Black Pot (2.47 acres), Hanalei Pavilion (1.34 acres), and Waioli Beach Park (6.41 acres) (Figure 1). Restrooms, picnic benches, limited parking, and lifeguard services are provided. The Hanalei Pier (shown at right) is a state facility located at Black Pot Beach Park. It is a popular location for sitting, strolling, and pole fishing. Ocean recreation activities occurring at the beach parks and in Hanalei Bay include surfing, boogie boarding,



swimming, boating, paddling (outrigger canoes), kayaking, windsurfing, kiteboarding, and SCUBA. Surf competitions and regattas are also held in Hanalei Bay and tow-in surfing occurs during high surf advisory conditions.

The Hanalei River outlets into the ocean just north of Black Pot Beach Park (Figure 1). It is one of only 14 rivers in the nation, and the only river in Hawaii, to be designated by the U.S. Environmental Protection Agency (EPA) as an American Heritage River.

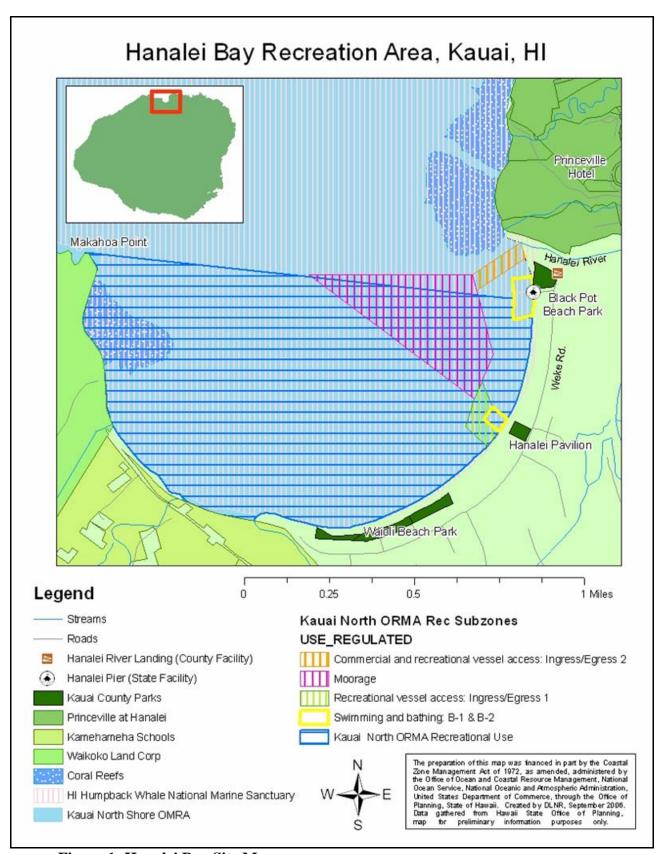


Figure 1: Hanalei Bay Site Map

The Hanalei River is a popular area for guided and unguided kayak tours. Outrigger canoes and boats are also launched into the river from the Hanalei River landing, a county facility more popularly known as "the boat ramp," located at the north end of Weke Road.

Hanalei Bay is part of the Hawaiian Islands Humpback Whale National Marine Sanctuary—all marine waters depicted on Figure 1 are included in this designation. Coral reefs are located primarily in the western portion of the bay and to the northeast just outside the bay (Figure 1). Hanalei Bay is not a harbor, but there is a designated mooring area for boats just offshore the mouth of the Hanalei River, as shown in Figure 1.

Land ownership bordering Hanalei Bay includes, in addition to the county parks, the Princeville Hotel and grounds, Waikoko Land Corporation, and Kamehameha Schools. A large residential area is directly adjacent to the beach parks, along Weke Road.

1.2 Commercial Ocean Recreation Operations in Hanalei Bay

Commercial activities occurring in Hanalei Bay include kayaking, surf schools, and use of the Hanalei Pier by movie tours.

1.3 Regulation of Commercial Ocean Recreation Activities

County Ordinances

Kauai County Ordinances, Section 19, Article 1 "Public Parks and Recreation," defines the county permit procedure for short-term concessions (permits are awarded for no more than three consecutive days).

State Rules and Regulations

The State of Hawaii Department of Land and Natural Resources has jurisdiction over the waters of Hanalei Bay, up to the high wash of the wave. Within its jurisdiction the State regulates operators of commercial vessels, water craft, and water sports equipment (this includes surf instructors). Both commercial and non-commercial uses are regulated in the North Shore Kauai ORMA.

Excerpts from Hawaii Administrative Rules (HAR) §13-256-36, <u>Use of commercial vessels at the Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp, that are relevant to this study include:</u>

- "(1) No commercial vessel shall operate at or use the Hanalei River, [or] Hanalei Bay ocean waters... for any commercial purposes without a commercial use permit."
- "(2) No commercial use permits shall be issued for commercial vessels to operate at or on the Hanalei River or Hanalei Bay ocean waters, except that up to two commercial use permits may be issued for kayaks to operate on the Hanalei River or Hanalei Bay ocean waters. No more than 24 passengers shall be allowed per day under each permit. A kayak tour group shall not exceed six vessels for passengers, and shall additionally include at least one guide vessel per six passengers."
- "(6) No commercial vessel shall carry more than 30 paying or non-paying passengers per day."

• "(7) No commercial vessel shall be issued a commercial use permit to operate within the North Shore Kauai ORMA if its passenger carrying capacity exceeds 25 individuals."

Fees are addressed in HAR \$13-256-37 as follows: "(a) Fees required to be paid to the department [DLNR] are.... (1) A registration fee payable at the time of issuance... [as noted in] section 13-253-1." Section 13-253-1 sets registration fees at \$5 for catamarans and canoes (\$3.50 for renewals), and 10 cents for each surfboard (same cost for renewals). "(2) A commercial operator license fee...shall be \$2.00." And, "(3) A monthly commercial vessel permit fee shall be the greater of \$75.00 or 2% of the monthly gross receipts."

General restrictions for <u>vessel operations</u> for Hanalei Bay ocean waters are given in HAR §13-256-39 as follows:

- "(1) No person shall operate a vessel at a speed in excess of "slow-no-wake" (five miles per hour) within 500 feet of the shoreline or within the designated mooring area."
- "(2) No person shall navigate a motorboat within 300 feet of a shoreline, diver's flag, or a designated swimming area. No person shall navigate a commercial motorboat within 500 feet of the shoreline, except within the designated ingress/egress corridors. Vessels engaged in fishing are exempt from the 300-foot shoreline restriction, except that they may not enter designated swimming areas."
- "(3) No person shall anchor or moor...except within the designated mooring area."
- "(4) No commercial fishing vessel over 50 feet in length may engage in fishing except by pole and line within Hanalei Bay ocean waters."

General restrictions for <u>recreational use zones</u> for Hanalei Bay ocean waters are provided in HAR §13-256-39 as follows:

- ORMA Zone A is designated for recreational use only. Zone A encompasses nearly the entire Hanalei Bay (see the blue horizontal stripes on Figure 1), stretching from Makahoa Point (west side of bay) to the Hanalei Pier (east side of bay). "No commercial vessel, sailboard, surfboard or other commercial water recreational device may be navigated within Zone A, provided that commercial vessels may be moored within that portion of the designated mooring area located within Zone A."
- There are two designated swim zones within Hanalei Bay. Zone B-1 is shown on Figure 1 as a yellow rectangle (extending 300 feet on either side of the Hanalei Pier) at Black Pot Beach Park. Zone B-2 is shown as a yellow rectangle at the Hanalei Pavilion. "No person shall operate or moor a vessel, sailboard, or any other recreation device within Zones B-1 and B-2, provided that this restriction shall not apply to: (A) Non-motorized vessels engaged in small scale surround net fishing or fishing and crabbing from shore; (B) Hawaiian design outrigger canoes." This, in effect, extends the "no commercial zone" an additional 300 feet beyond the Hanalei Pier.

- The designated mooring area (Figure 1) has the following restrictions: "(2) All vessels within Hanalei Bay ocean waters shall be moored or anchored within the designated mooring area. (3) No person shall navigate, moor, or anchor a commercial vessel, providing services on a fee basis, in a designated mooring area unless the vessel has been registered and the owner has a valid commercial use permit issued by the department. (4) No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance with U.S. Coast Guard regulations. (5) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department."
- Ingress/Egress Zone 1, shown in green on Figure 1 (near the Hanalei Pavilion), is "...designated for use by recreational motorized vessels, sailing catamarans and dinghies used as tenders for transient recreational vessels." Ingress/Egress Zone 2, depicted in orange on Figure 1 (near the Hanalei River mouth), is "...designated for use by both commercial and recreational vessels."

ORMA Recreation Advisory Committees

According to §13-256-3 (b), Recreation Advisory Committees are to be established by the department for each designated ORMA. There are two ORMA Advisory Groups for Kauai, the South ORMA (SORMA) and the North ORMA (NORMA). In May 2004, NORMA recommended rule amendments for HAR Section 13, Chapters 251 and 256 for recreational use in Hanalei Bay. These proposed rule amendments relate specifically to tow-in surfing, thrill craft, and surf school activities and are summarized below. A more complete description of these proposed amendments is attached in Appendix 4 ("Hanalei Ocean Recreation Focus Group Meeting Summary and Attachments") of this report.

- Only allow tow-in surfing during high surf advisory warnings for the northwest facing shores of Kauai (there were problems with the law not specifically stating the high surf warning had to be for the island in question, so tow-in-surfing was occurring when there were warnings issued for neighbor islands)
- Only allow thrill craft use in Hanalei Bay for tow-in surfing and rescue operations
- Change the title of Chapter 251 from "Waikiki and Kaanapali Ocean Waters" to "Ocean Waters of the State"
- Limit the number of surf schools within Hanalei Bay ocean waters to no more than eight. In addition "...surf schools shall not exceed four students and one instructor in the water at one time" and "Surf instructors shall be qualified as per HAR Chapters §13-251 and §13-256."

Federal Regulations

Federal laws protecting marine wildlife are covered in Part 1 of this report, in Section 1.1 of "Rules and Regulations."

U.S. EPA American Heritage River

As stated on the American Heritage River website (http://www.epa.gov/rivers/), "The heart of the American Heritage Rivers initiative is locally driven and designed solutions. The federal role is confined to fostering community empowerment, while providing focused attention and resources to help river communities restore their environment,

revitalize their economy, renew their culture and preserve their history." The three objectives of the American Heritage Rivers initiative are, therefore, natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

2. PRIMARY ISSUES OF CONCERN

Hanalei Ocean Recreation Focus Group participants (hereafter referred to as "Focus Group" participants) identified the following concerns at the Focus Group meeting, in individual interviews, and through phone call and email correspondence. Their primary resource conservation concerns were resource impacts. Their primary concerns relating to public safety and access were user conflicts, overcrowding, safety and enforcement, and access for fishing. The topics of greatest concern relating to commercial ocean recreation activities were commercial operator etiquette, commercial rentals of surf boards and kayaks at county beach parks, commercial use of the recreational pier, and enforcement.

The Hanalei Ocean Recreation Focus Group, facilitated by CSV Consultants, is comprised of individuals representing the following agencies, organizations, and businesses:

<u>State Government:</u> Office of Hawaiian Affairs, DLNR (Office of the Chairperson, Division of Aquatic Resources, Division of Boating and Ocean Recreation, Division of Conservation and Resources Enforcement, and Division of State Parks)

<u>County Government:</u> Kauai County (Ocean Safety, Parks and Recreation, and Planning Department)

Non-Profits: Hanalei Watershed Hui, Hui Hoomalu o Ka'aina, Hui Makaainana o Makana, Hanalei Community Center, Waipa Foundation, Hanalei-Ha'ena Community Association, Sierra Club, Na Molokama Canoe Club, Hanalei Canoe Club, Hanalei Hawaiian Civic Club

<u>Businesses:</u> Titus Kinimaka's Hawaiian School of Surfing, Kayak Kauai, Kayak Hanalei

Others: North ORMA Advisory Group, Governor's Liaison for Kauai, Kauai Hotel Association, fishermen, concerned citizens

2.1 Resource Conservation

Resource Impacts

Natural resource impacts reported by the DLNR, DAR representative at the Focus Group meeting included unwatched gill nets, marine debris, harassment of monk seals, late night parties at beaches were turtles and seals were present, and businesses promoting poor stewardship behaviors. Focus Group participants felt part of the problem was unregulated commercial operations. They also felt strongly that there is a disconnect between the marketing of paradise and the reality of the state of Hawaii's resources. They expressed concern, in particular, about the marketing of behaviors such as swimming with dolphins and sea turtles, which are protected from harassment by the Marine Mammal Protection Act and the Endangered Species Act, respectively. Locally based efforts to educate visitors to the area are giving visitors some exposure to good stewardship behaviors.

The Executive Director of the Hanalei Watershed Hui also noted problems in Hanalei Bay with commercial akule fishing. While HAR §13-256-39 restricts the activities of commercial fishing vessels over 50 feet in length (i.e. they may not engage in fishing except by pole and line within Hanalei Bay ocean waters), it does not set restrictions for

fishing activities for boats 50 feet in length or less. Focus Group participants would like to see regulation of commercial fishing activities in Hanalei Bay regardless of boat length.

2.2 Public Safety and Access

User Conflicts

Ocean recreation user conflicts identified by Focus Group participants included problems between fishing and recreational sports (kite surfing and windsurfing), and problems with surf school students riding their surfboards all the way to the beach and running into swimmers. Some Focus Group participants also felt that surf school instructors and students were crowding out or intimidating families and novice surfers near the Hanalei Pier and other areas, and that their large surfboard rental vehicles crowded the parking area.

Overcrowding

Focus Group participants said that the make-up of the community is changing as visitation levels to Hanalei Bay continue to increase (in part from the increased number of cruise ship visits to the island). This is evidenced by overcrowded parking conditions along Weke Road in the neighborhood fronting Black Pot Beach Park. Many expressed a desire for Hanalei Bay to be primarily a non-commercial family-focused beach.

Safety and Enforcement

The Ocean Safety Officer (OSO) present at the Focus Group meeting said there is a need for more county OSOs. There are only four OSOs stationed in Hanalei Bay, which is a fairly large area. According to their data, the number of rescues has risen every year and drowning rates are still up.

While OSOs don't have enforcement authority, they would welcome it. The OSO present at the meeting said he felt lucky that most people already treat them as if they have enforcement authority.

Access for Fishing

Hanalei residents present at the Focus Group meeting are concerned that the Hanalei River Landing, a county facility, is in disrepair. Residents need access to the water for fishing and boating.

2.3 Commercial Ocean Recreation Activities

Commercial Operator Etiquette

Focus Group participants are concerned that there are no regulations in place mandating responsible safety, cultural, and environmental etiquette for commercial operators or mandating hours and locations of operation. For example, one participant emphasized that there is a cultural way of teaching surfing and it needs to be acknowledged as a cultural sport. Another was concerned about inadequate student-to-instructor surf school ratios. One surf school operator present at the Focus Group meeting responded that his surf school does have several environmental and safety guidelines already in place and would welcome good business guidelines from the State.

Others were concerned that commercial operators making a profit while using public beach parks are not contributing back to the community financially. While there are no regulations stipulating that businesses must do this, voluntary contributions have occurred.

Commercial operator etiquette is an especially important topic since commercial activity is limited to a relatively small area in Hanalei Bay (roughly 300 feet north of the Hanalei Pier and extending to the river mouth).

Commercial Rentals of Surf Boards and Kayaks at County Beach Parks

Focus Group participants were concerned that there may be an increase in commercial activities at Hanalei beach parks. They wanted to see these activities controlled.

Commercial Use of Recreational Pier

Hanalei Pier is classified as a recreational pier but is receiving commercial use from movie tours on a regular basis. Some Focus Group participants were concerned that this use is crowding people who fish from the pier. In addition, they were concerned that no money is being contributed to the pier and its upkeep for this commercial use.

Enforcement

In light of the community's history of struggling to control commercial use, Focus Group participants said they would like to see enforcement of illegal commercial uses occurring in Hanalei Bay. Part of the problem is not just that commercial activities are occurring without permits, but the location of where these activities are taking place. While some of these uses are occurring outside area zoned no-commercial-use, some commercial activities are occurring within Zone A, which is illegal per HAR §13-256-39.

3. OTHER ISSUES OF CONCERN

Cruise Ships

Hanalei Focus Group participants were concerned about the threat of cruise ships entering or mooring in the bay. DLNR staff at the meeting assured them that this will not be occurring.

Application of Research

The Hanalei Watershed Hui, established to conduct research and community educational outreach projects in an effort to protect the Hanalei River, has access to a number of data sets collected by the U.S. Geological Survey (USGS), the Hawaii Coral Reef Assessment and Monitoring Program (CRAMP), and others. These studies include a more than ten year assessment of fish (including native fish), five years of water quality data, three years of coral data, and two years of groundwater data. Focus Group participants are concerned that the resource conservation methods suggested in these studies aren't being applied.

Water Quality

According to the Executive Director of the Hanalei Watershed Hui, water tests taken in the Hanalei River near the boat ramp are regularly showing elevated bacterial counts. She also stated that a recent EPA grant is replacing cess pools that are in close proximity to the Hanalei River with septic systems to help remedy the situation.

Kayak Use Levels

There was concern among Focus Group participants that there are too many kayaks on the Hanalei River. Regulations are already in place, per HAR §13-256-36, limiting the number of commercial kayak companies allowed to operate on the Hanalei River or in Hanalei Bay as part of a tour. Focus Group participants would also like to see regulations controlling the number of unguided kayaks allowed.

Accreted Land

Focus Group participants were concerned about the status of accreted land in Hanalei Bay. They would like to know whether it is state or county land.

Funding

Focus Group participants expressed an interest in tapping into tourism dollars to help support local resource conservation efforts. Many economic willingness-to-pay studies have shown that tourists are willing to put additional dollars towards the protection of cultural and environmental resources they come to Hawaii to enjoy.

Marine Management Area Planning Process

Focus Group participants mentioned that the community intends to conduct a Marine Management Area Planning Process in the next couple of years. Many of the fishermen from Hanalei are currently participating in this process for the ahupua'a of Ha'ena, "Community-based Subsistence Fishery Area of Ha'ena" and plan to do the same for Hanalei.

Boundary of Mooring Area on the Site Map

Several Focus Group participants were concerned that the boundary of the mooring area as shown on Figure 1 (which is what is written into rule) is not in alignment with the actual location of moorings in the bay. They would like a GPS survey done of the area and a map update, if necessary.

4. PROPOSED RECOMMENDATIONS FOR THE HANALEI FOCUS SITE

Top priority recommendations for the Hanalei Focus Site and their expected outcomes are presented in the tables below. The first three tables mirror the DLNR hierarchy of uses: Table 1 contains proposed recommendations for resource conservation, Table 2 contains proposed recommendations for the enhancement of public safety and access, and Table 3 contains proposed recommendations for control of commercial ocean recreation activities. The final table, Table 4, is a comparison of different commercial operator permit issuance systems.

Table 1: Proposed Recommendations for Resource Conservation

Top Priority Recommendations	Expected Outcomes
Amend HAR §13-256-39 (General restrictions for	• Less pressure on natural resources.
vessel operations for Hanalei Bay ocean waters) to	Fewer user conflicts
regulate commercial fishing boat activities (such as	
catch limits) for boats 50 feet in length or less	
Involve the tourism industry (including airlines) in	Improved natural and cultural resource
discussions about: (1) including stewardship	protection
guidelines in marketing efforts, and (2) providing	Improved community-tourism industry
funding for local educational outreach initiatives	relations
	Financial support of local resource
	conservation projects
Other Recommendations	Expected Outcomes
Conduct a GPS survey of the mooring buoy boundary	Resolve the current boundary issue
in Hanalei Bay	·

Table 2: Proposed Recommendations for Enhancement of Public Safety and Access

Top Priority Recommendations	Expected Outcomes
Encourage the County to improve their Hanalei River	Better access for fishermen and boaters
Landing facility (i.e. build a new ramp)	
Encourage the County to increase the number of	Increased ocean recreational user safety
Ocean Safety Officers for Hanalei Bay	·

Table 3: Proposed Recommendations for Commercial Ocean Recreation Activities

Top Priority Recommendations	Expected Outcomes	
Enforce the no-commercial-use of ORMA Zone A	 Reduced user conflicts 	
per HAR §13-256-39	 Increased safety 	
Regulate (or consider banning) commercial use of the Hanalei Pier. If regulation is the choice, then restrict hours of use (per discussions with affected fishermen) and charge a fee to go towards pier maintenance	• Less disturbance of resident fishermen and other recreational users	
Standardize certification for commercial operators (e.g. all surf school instructors could be CPR certified at a minimum and preferably lifeguard certified).	Improved safetyIncreased level of professionalism within the industry	
Create location-specific permits for surf schools and address advanced surf school/surf instructors.	 Control over commercial operator protocols A way to limit the number of commercial operations occurring and legally differentiate between commercial operators 	
Limit the number of commercial surf school operations occurring in the bay to provide adequate space for non-commercial recreational users.	Less overcrowdingFewer user conflicts	
Determine what type of permit issuing system would be appropriate.	• See "Table 4: Comparison of Different Commercial Operator Permit Issuance Systems" below	

Involve surf instructors in developing good business operating protocols, including: (1) Pre-trip safety, environmental, and cultural briefings (including teaching cultural guidelines for surfing), (2) Establishing a student-to-instructor ratio, (3) Creating a way to identify students and instructors (e.g., though brightly colored rash guards), (4) Involving OSOs in fine-tuning operation locations depending on weather (e.g. having flags showing areas for use as determined by wave conditions), and (5) Shuttling guests to the surf school from offsite parking areas to avoid congesting county beach park parking lots Consider mandating these as permit stipulations. Develop a penalty system by which to fine, suspend, and/or revoke permits from permittees who are not in compliance.	 Safer, more professional tours Enhanced resource protection Better compliance
Increase DOCARE enforcement capacity and cite businesses operating without commercial permits under the new permit system	 Control of the number of commercial operations occurring Fewer user conflicts and less crowded conditions Increased safety and resource protection
Other Recommendations	Expected Outcomes
Conduct studies for determining current numbers of unguided kayaks on the Hanalei River	Better information from which to make management decisions
Consider requiring an additional conservation fee per visitor taking a commercial tour/lesson.	 No additional cost to businesses Funding for resource conservation projects Negligible cost to the visitor as shown by willingness-to-pay surveys

Table 4: Comparison of Different Commercial Operator Permit Issuance Systems

Table 4. Comparison of Different Commercial Operator 1 erint issuance Systems		
Type of Permit Issuance System	Perceived Benefits	Perceived Liabilities
Sealed Bid System: All qualified applicants meeting minimum requirements would submit sealed bids. Permits would be issued to the highest bidders.	 A fair system for distributing a limited number of available commercial operator permits. 	Potential for existing businesses to be out-bid
Request for Proposals (RFP) System: Proposals would be submitted and rated based on a number of factors, including prior business experience, business registration, operational procedures, and "bid" price.	Would allow for a more subjective review of qualifications beyond the fulfillment of basic requirements and amount of bid offered.	 Requires a more lengthy administration process Review process could be criticized as subjective

On-line reservation system: The system currently being used by Na Ala Hele Trails serves as a prototype for a way to limit the number of operators in a specific area without limiting the number of commercial operator permits issued. The on-line system would be on a first come, first served basis, but would not allow any particular company to sign up for too many areas.	 Businesses would need to qualify Will accommodate new business start ups as well as established businesses Puts a ceiling on the number of commercial ocean recreation operations allowed in a particular area. 	 Can not accommodate last minute bookings or changes in guest numbers Does not accommodate sudden changes in weather or ocean conditions
Non-transferable permits to all existing businesses: Instead of	 All qualified, existing businesses can receive 	 Does not accommodate new business start ups
limiting the number of permits	permits	Business permits cannot
issued, non-transferable permits		be transferred to family
would be issued to all currently		members
qualified existing businesses.		• If attrition rates are slow
Then, with attrition, some permits		then carrying capacity will
would expire so that the number of		not be met and
permits would eventually align		overcrowding will occur
with carrying capacity. This is being done by Maui County for		May not be appropriate for
their new permitting system.		some overcrowded areas